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law, but was within the meaning and object, the statute should be liberally construed. *White* v. *The Mary Ann*, 6 Cal. 462. This position was maintained by the two dissenting judges.

CORPORATIONS—LIABILITY OF DIRECTORS—ENFORCEMENT AT LAW—AMENDMENT OF COMPLAINT—MARSH V. KAYE ET AL., 60 N. Y. Sup. 439 (Supreme Court).—The membership corporation law, Section 11, makes directors "jointly and severally" liable for debts contracted while they are directors, if the action against them to recover the amount unsatisfied against the corporation be commenced within one year after return of execution unsatisfied. *Held*, that the liability is primary, and must be enforced by an action at law, not in equity, as was attempted in the present case. The complainant petitioned that the amounts which the directors were liable to pay might be ascertained and apportioned to the several debts of the plaintiff, and of such other creditors as might become entitled to share in the fruits of the action; and that the defendant creditors of the corporation, and all other persons claiming to be creditors might be enjoined from prosecuting any action at law to recover any debt due from said corporation and from collecting any judgment in any such action. The court, however, considered the relation of these directors to a creditor simply that of joint and several debtors from whom the creditor could recover the amount of his debt by an action at law, and having a remedy at law, no cause of action in equity existed which would entitle him to implead all other creditors with all the debtors who were liable to such creditors for the amount of their claims against the corporation, for the purpose of settling the total amount of such indebtedness in one action. "It is no business of the plaintiff's whether other creditors of the same debtors do or do not prosecute their claims, nor have the other creditors any interest in the recovery by the plaintiff of his claim against his debtors; and nothing alleged in this complaint would justify the court in restraining these other defendants from prosecuting their claims at law, as they have a right to do."

McLaughlin, J., dissents on the ground that the avoidance of a multiplicity of actions is one of the recognized grounds of equity jurisdiction, and that no reason can be assigned why equitable jurisdiction ought not to be sustained to enforce the liability of the directors in the case at bar, to prevent a multiplicity of actions, just as it is sustained in actions against stockholders to enforce their statutory liability, but the majority opinion points out the distinction between the two cases, as follows: "In the case of limited liability imposed upon stockholders, the Legislature created a fund which should be applied to the payment of the corporate debts, and it is apparent that to create and administer that fund, a resort to a court of equity is essential. In the case at bar no liability is imposed to create a fund for the benefit of *all creditors* of the corporation, nor would all creditors be entitled to share in the liability imposed upon the directors, but the directors are made *primarily responsible* to *each creditor* of the corporation."

The majority of the court held also that it was not error to refuse to permit amendment of the dismissal of a complaint to hold trustees of a defunct corporation liable, the effect of which would be to change the action to one for an accounting against the receiver, when the original complaint contains no allegations as to assets in the receiver's hands, and asks no relief as against him, and does not demand an accounting.

McLaughlin, J., dissented likewise from this opinion on the ground that the complaint was sufficient to enable the court to direct an accounting even without amendment. "Before the plaintiff can subject the directors to the statutory liability," he says, "he must apply towards the payment of the corporate debts all of the corporate assets. A permanent receiver having

been appointed, this can only be done by compelling him to account. Until such accounting be had, and an application be made of the proceeds of the assets held by the receiver, it is difficult to see how a recovery can be had against the directors, because until then the extent of their liability cannot be ascertained."

CORPORATIONS—SALE OF ASSETS BY ALL STOCKHOLDERS WITHOUT FORMAL ACTION—PURCHASE OF STOCK IN OTHER CORPORATIONS—ULTRA VIRES—DE LA VERGNE REFRIGERATING M. CO. v. GERMAN SAVINGS INST. ET AL., 20 Sup. Ct. Rep. 20.--A contract for purchase of stock in another company for the purpose of controlling it, unless expressly authorized, is *ultra vires* and void. *Ultra vires* is a good defense to defeat recovery upon an executed contract, although an action upon *quantum meruit* will lie for benefits received. The good will of a company belongs to the corporation, and a transfer of it by all the stockholders without formal corporate action is invalid and confers no benefit. Justices Brewer and McKenna dissenting.

This reverses two decisions of the Circuit Court of Appeals for the Eighth District (36 U. S. A. 184, 49 U. S. A. 777). Although the generally accepted rule seems to be that *ultra vires* cannot be set up by a corporation to avoid its obligation upon a contract performed by the other party (Moraw, § 689 ff.), it is well established in the Supreme Court that such defense is good. The doctrine in this court is that "a contract of a corporation which is *ultra vires* in the proper sense, that is to say, outside the object of its creation, as defined in the law of its organization * * * is wholly void and of no legal effect." "Nothing done under it, nor the action of the court can infuse any vitality into it." But the court will do justice, so far as possible, by permitting recovery on the implied contract to return or make compensation for property or money which it has no right to retain. *Central Transf. Co.* v. *Pullman*, 139 U. S. 24, 60-61.

EXEMPLARY DAMAGES—EJECTMENT OF PASSENGER—IMPLIED MALICE—COWEN ET AL. v. WINTERS, 96 Fed. 929.—A general passenger agent deliberately repudiated certain tickets that had been sold to the public. *Held*, that a bona fide purchaser of one of these tickets could recover exemplary damages for his ejectment from defendant's train.

The rule in regard to exemplary damages, as laid down in *Railroad Co.* v. *Prentice*, 147 U. S. 101-107, is now firmly established and well recognized. The present case is interesting as a recent exposition of that rule. The peculiar duties that a common carrier owes to the public makes an abuse of its civil obligations especially serious. It is this feature, the carrier's close connection with the public, that permits a court to grant the rather exceptional remedy of exemplary damages. The facts in the present case seem to justify the court in holding as it has. But any extension of rule beyond the principles laid down in *Railroad Co.* v. *Prentice* above, should be viewed with concern, especially in view of the present apparent hostility to large corporations.

DEAD BODIES—RIGHT OF WIDOW TO REMOVE HUSBAND'S REMAINS—60 N. Y. Sup. 539 (Supreme Court).—A widow freely consenting to the interment of her husband's body in a certain burying ground, is estopped from removing it. But when, at the time of his death, she was in feeble health and became nearly frantic during the time which preceded the burial, she should not be regarded as consenting that the place of burial be permanent.

It has long since been established that the right of burial is a legal right. *Foley* v. *Phelps*, 1 N. Y. App. Div. 551; *Pierce* v. *Swan Point Cemetery*, 10 R. I. 227; 14 Am. Rep. 667; *Matter of Widening Beekman St.*, 4 Bradf. (N. Y.) 503;